

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1. a. Whether there should be additional reimbursement of \$26,150.37 for date of service, 05/24/02.
- b. The request was received on 08/20/02.

II. EXHIBITS

1. Requestor, Exhibit I:
 - a. TWCC 60
 - b. UB-92(s)
 - c. EOB/TWCC 62 forms/Medical Audit summary
 - d. Medical Records
 - e. Example EOB(s) from other Insurance Carriers
 - f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit II:
 - a. TWCC 60 and Response to a Request for Dispute Resolution
 - b. UB-92(s)
 - c. Medical Audit summary/EOB/TWCC 62 form
 - d. Medical Records
 - e. Undated memorandum
 - f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 10/17/02. Per Rule 133.307 (g) (4), the carrier representative signed for the copy on 10/17/02. The response from the insurance carrier was received in the Division on 10/21/02. Based on 133.307 (i) the insurance carrier's response is timely.
4. Notice of Additional Information submitted by Requestor is reflected as Exhibit III of the Commission's case file.

III. PARTIES' POSITIONS

1. Requestor: Noted on the Table of Disputed Services:

“reimbursement amount unacceptable-see attached”
2. Respondent: Letter dated 10/21/02

“...I am filing a response to the requestor’s additional documentation as noticed on September 5, 2002 on behalf of the above referenced insurance carrier, in response to the Requestor’s dispute regarding fee reimbursement for date of service May 24, 2002. As a result of this review no further payment was recommended towards the amount in dispute of \$26,150.37....”

IV. FINDINGS

1. Based on Commission Rule 133.307(d) (1) (2), the only date of service eligible for review is 05/24/02.
2. This decision is being written based on the documentation that was in the file at the time it was assigned to this Medical Dispute Resolution Officer.
3. Per the Requestor’s Table of Disputed Services, the Requestor billed the Carrier \$28,386.37 for services rendered on the date in dispute above.
4. Per the Requestor’s Table of Disputed Services, the Carrier paid the Requestor \$2,236.00 for services rendered on the date in dispute above.
5. The Carrier’s EOBs denied any additional reimbursement as “M –NO MAR, REDUCED TO FAIR & REASONABLE”. There is no MAR value for ambulatory surgical facility centers; therefore this dispute will be reviewed as reduced to fair and reasonable.
6. Per the Requestor’s Table of Disputed Services, the amount in dispute is \$26,150.37 for services rendered on the date in dispute above.

V. RATIONALE

Medical Review Division's rationale:

The medical documentation indicates the services were performed at an ambulatory surgical center. Commission Rule 134.401 (a)(4) states ASCs, “shall be reimbursed at a fair and reasonable rate....” The carrier has submitted documentation asserting that they have paid a fair and reasonable reimbursement. Respondent has submitted an explanation of their payment methodology. The Provider has submitted example EOB from another Carrier.

Per Rule 133.304 (i), “When the insurance carrier pays a health care provider for treatment(s) and/or service(s) for which the Commission has not established a maximum allowable

reimbursement, the insurance carrier shall:

1. develop and consistently apply a methodology to determine fair and reasonable reimbursement amounts to ensure that similar procedures provided in similar circumstances receive similar reimbursement;
2. explain and document the method it used to calculate the rate of pay, and apply this method consistently;
3. reference its method in the claim file; and
4. explain and document in the claim file any deviation for an individual medical bill from its usual method in determining the rate of reimbursement.”

The response from the carrier shall include, per Rule 133.307 (j) (1) (F), “.... if the dispute involves health care for which the Commission has not established a maximum allowable reimbursement, documentation that discusses, demonstrates, and justifies that the amount the respondent paid is a fair and reasonable rate of reimbursement in accordance with Texas Labor Code 413.011 and §133.1 and 134.1 of this title;”.

Due to the fact that there is no current fee guideline for ASC’s, the Medical Review Division has to determine, based on the parties’ submission of information, which has provided the more persuasive evidence. Pursuant to TWCC Rule 133.307 (g) (3) (D), the requestor has submitted EOB from another Carrier; however has failed to submit documentation that “...discusses, demonstrates, and justifies that the payment being sought is a fair and reasonable rate of reimbursement....” The Carrier has submitted their information indicating their rationale for their reimbursement.

The law or rules are not specific in the amount of evidence that has to be submitted for a determination of fair and reasonable. The Medical Review Division has reviewed the file to determine which party has provided the most persuasive evidence. In this case, the Requestor has failed to support their position that the amount billed is fair and reasonable and the Respondent has submitted enough information to support the argument that the amount reimbursed represents a fair and reasonable reimbursement. Therefore, **no additional** reimbursement is recommended.

REFERENCES: The Texas Workers’ Compensation Act & Rules: Sec 413.011 (d); Rule 133.304 (i); Rule 133.307 (g) (3) (D); and (j) (1) (F).

The above Findings and Decision are hereby issued this 15th day of April 2003.

Denise Terry
Medical Dispute Resolution Officer
Medical Review Division
DT/dt